

AUG 18 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEON H. POGUE,

Plaintiff - Appellant,

v.

JAMES YATES; et al.,

Defendants - Appellees.

No. 08-15682

D.C. No. 1:07-CV-01577-OWW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted August 11, 2008^{**}

Before: CANBY, LEAVY and KLEINFELD, Circuit Judges.

Upon review of the record and appellant's response to this court's order to show cause, this court hereby summarily affirms the district court's order denying

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appellant's request for preliminary injunctive relief because the request was contained in the complaint and the district court dismissed the complaint prior to service. *See* Fed. R. Civ. P. 65(a)(1) (court may issue preliminary injunction only on notice to adverse party); *see also United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982) (per curiam) (summary affirmance appropriate where result is clear from face of record).

All pending motions are denied as moot.

AFFIRMED.